

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner is the single mother of a nine-year-old boy and a younger girl. She was divorced from the boy's father about seven years ago and since that time has worked a number of different jobs. (The girl, who was born after the divorce, has a different father.) Over the past five years, she has relied on ANFC for support during the months in which she was unemployed. Most recently, she has averaged two or three months per year on ANFC. In July, she asked to be taken off of ANFC as she has started full-time employment at a ski area. Last year she made about \$10,000 per year. She still

receives Food Stamps and VHAP benefits. Her son is covered for insurance under the Dr. Dynasaur program.

2. At the time of her divorce, the petitioner and her ex-husband were represented by the same lawyer. The court established a \$90 per week (\$387 per month) child support payment amount for the petitioner's ex-husband. He has only made sporadic payments on this support amount. About two years ago, the petitioner asked her ex-husband to make a car payment for her in lieu of support payments. He has been paying \$380 per month on her car to the Ford Motor Company. He also gives the son occasional gifts. The petitioner is satisfied that her ex-husband makes a sufficient contribution to her child's support.

3. As part of her last application for ANFC in May of 2000, the petitioner asked the Department to release her from cooperating with pursuing child support against her ex-husband. Although she is not currently on ANFC, the Department has an assignment of the support due to her for every month she has been on such benefits and wants to collect the arrearage from him. The arrearage is several thousand dollars. The Department is also interested in modifying the amount of support paid based on its belief that the petitioner's ex-husband may have substantial earnings at this

point. The petitioner reports that he may make in excess of \$60,000 per year as a computer programmer in the Philadelphia area.

4. The petitioner does not want the Department to pursue her ex-husband for support and has asked that she be allowed to repay the ANFC debt herself. This is because her ex-husband, who has not remarried and has no other children, has told her that he cannot afford to see his son if he is required to pay any more in support. He currently flies the boy to Philadelphia several times per year to see him. She is sincerely concerned that her ex-husband will cut off his relationship with his son if he is pursued for back support by the Department or if his current support amount is modified. Because she grew up without her father in her life, she does not want this to happen to her son.

5. The hearing officer finds that the evidence submitted by the petitioner does not indicate a reasonable anticipation of serious emotional harm to her child if she is required to cooperate in obtaining support. There is a possibility that the pursuit of support may change or complicate the existing relationship between the child and his parents. However, there is insufficient evidence upon which to reasonably conclude that emotional harm of the level

contemplated by the regulations is likely if the petitioner is required to cooperate.

ORDER

The decision of the Department is affirmed.

REASONS

Any person who receives ANFC automatically assigns her rights to support to the Department of Prevention, Assistance, Training and Health Access and is expected as a condition of eligibility to cooperate in establishing paternity and collecting child support benefits unless she has "good cause" for failing to do so. W.A.M. 2331.32. "Good cause" is defined in the Department's regulations as follows:

. . . To show that cooperation may be against the best interests of the child, the applicant or recipient must provide evidence that cooperation in establishing parentage or pursuing support is reasonably anticipated to result in any one of the following:

1. Serious physical or emotional harm to the child for whom support is being sought.
2. Physical or emotional harm to the recipient parent or caretaker that is so serious it reduces his/her ability to care for the child adequately.

NOTE: Physical or emotional harm must be of a serious nature to justify a good cause finding.

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W.A.M. 2331.34 further delineates the type of evidence which must underlie a request for an exemption due to claimed emotional harm:

Whenever the waiver request is based in whole or in part upon the anticipation of emotional harm to the child, the recipient parent, or the caretaker, the present emotional state and health history of the individual subject to emotional harm must be considered as well as the extent of involvement of the child in the establishment of parentage or support enforcement activity to be undertaken. A finding of good cause for emotional harm may only be based upon a demonstration of an emotional impairment that substantially affects the individual's functioning.

The Board, relying on Bootes v. Cmmr. of Penn. Dept. of Public Welfare, 439 A.2d 883, 885 (1982), has held that a determination of reasonable anticipation of harm under the above regulations is a factual decision which must be made on a "case by case basis on the weight, sufficiency and quality of the gathered evidence" and that the "final decision requires a subjective judgment on the part of the hearing examiner." See Fair Hearings No. 13,236 and 14,157. The Board has also held, based on a ruling by the federal Department of Health and Human Services (43 Fed. Reg. 2176, January 16, 1978) interpreting the federal regulation at 45 C.F.R. § 232.42 which sets forth the "good cause" exemption, that a sufficient level of severity of harm is met only "in

those few extraordinary circumstances where the parent or child faces a risk so real that it would outweigh the emotional, physical and financial benefits of the child's receiving parental support." See Fair Hearing No. 14,157.

The finder of fact, then, is required to determine whether the emotional harm alleged is proven based (1) on a reasonable likelihood that the non-custodial parent will take some action with regard to the child if support is pursued; (2) that, based on the health history of the child, the action is expected to cause emotional harm to the child; and (3) the emotional harm is so severe that it substantially affects the child's ability to function. Only if these criteria are met can the custodial parent be released from cooperating in securing parental support for her child.

In this case, the petitioner's ex-husband has told her that he will not see the child if she pursues support because he will not be able to afford it. The petitioner has taken this statement at face value and is not willing to test whether it is true or not. She has not offered any evidence that he has made good on such a threat in the past or that he has analyzed what amount of support he might actually be required to pay. The child's father cannot know at this time what amounts he might have to pay in child support or what

allowances the Court might make based on his need to transport the child to Pennsylvania for visitation. While the petitioner herself might be willing to take this statement at face value, it cannot be found that the evidence is sufficient to conclude that the father will indeed cut off his long-established visitation with his son over child support issues.

Even if proof existed that the father would take this action, the petitioner did not present any health history showing that her son would be seriously emotionally injured if his father cut back or stopped visitation. While such an action would undoubtedly be negative for the child, the Board has held that the destabilization of the present parent-child relationship is not per se a factor to be considered in granting a waiver. See Fair Hearings No. 12,863 and 13,236. The petitioner did not meet her burden of documenting through health records that her child would suffer emotional injury from any changes in visitation with his father serious enough to substantially affect his ability to function.

The Department was correct under the state and federal regulations and guidelines and prior Board decisions in its denial of a request for a waiver and that denial must be upheld. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19. This decision is also consistent with the stated federal

policy of not depriving children of their right to obtain child support without a very serious countervailing reason. The testimony offered by the petitioner indicated that her ex-husband may have the financial ability to provide considerable support to her son, that she did not understand what her child's rights to receive support might be in this state and that she had been loathe to seek any enforcement of those rights because of threats made by her ex-husband to stop seeing his son. The petitioner was strongly urged to contact her own attorney to discuss what her child's rights are in this situation.

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